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7 RENE MIRELES,
8 Plaintiff,
9 v.
10 C. KOENING, et al.,
11 Defendants.

Case No. 20-cv-01248-HSG

**ORDER DENYING PLAINTIFF'S
REQUEST TO DESIGNATE AND
REDEFINE RECORD; DENYING
WITHOUT PREJUDICE MOTION TO
COMPEL**

Re: Dkt. Nos. 16, 17

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13 Plaintiff, an inmate at Correctional Training Facility ("CTF"), filed this *pro se* civil rights
14 action pursuant to 42 U.S.C. § 1983, alleging that CTF correctional officials Koenig, Lee,
15 Ortega, and Gomez were deliberately indifferent to his safety, in violation of the Eighth
16 Amendment. This order addresses the two motions pending before the Court (Dkt. Nos. 16, 17).

17 **DISCUSSION**

18 **I. Request that the Court Designate and Define the Record**

19 Plaintiff has filed a motion requesting that the Court designate and define the record. Dkt.
20 No. 16. However, it is unclear what relief the motion seeks. In this motion, plaintiff claims that
21 defendants have not participated in the discovery process, and appears to take issue with the
22 waiver of reply filed by defendants. Dkt. No. 16 at 2-3.

23 It appears that defendants have participated in the discovery process, thereby triggering the
24 motion to compel (Dkt. No. 17). This motion appears to have been prepared on May 22, 2020, *see*
25 Dkt. No. 16 at 2, prior to plaintiff receiving discovery responses from defendants on or about May
26 26, 2020, *see* Dkt. No. 17 at 2. Accordingly, there seems to be no issue arising from defendants'
27 failure to participate in the discovery process.

28 With respect to the waiver of reply, plaintiff is under the mistaken impression that a waiver

of reply allows defendants to forgo filing motions. Plaintiff is incorrect. Section 1997e(g)(1) of the Prison Reform Litigation Act (“PRLA”) provides that a defendant may waive the right to reply to any Section 1983 action brought by a prisoner by filing a waiver of reply, and that a waiver of reply does not constitute an admission of the allegations contained in the complaint. 42 U.S.C. § 1997e(g)(1). Section 1997e(g)(2) allows a court to require a defendant to reply to a complaint. 42 U.S.C. § 1997e(g)(2). Here, in its March 10, 2020 order of service, the Court did not require defendants to file an answer but did require defendants to file a dispositive motion by June 9, 2020. *See* Dkt. No. 8. On June 8, 2020, the Court granted defendants an extension of time to September 7, 2020, to file their dispositive motion. Dkt. No. 15. Accordingly, defendants properly filed a waiver of reply in lieu of filing an answer, as allowed by Section 1997e(g)(1) and the Court’s March 10, 2020 order of service, and defendants are still required to prosecute this action by filing a dispositive motion and have indicated that they intend to do so. Dkt. Nos. 14, 15. Because it is unclear what this motion seeks, i.e. how the record should be defined or designated, this motion is DENIED without prejudice to filing a renewed motion that clearly specifies the court relief being sought.

II. Motion to Compel

Plaintiff has filed a motion to compel defendants to provide further responses to certain interrogatories. Dkt. No. 16. Plaintiff’s motion to compel lacks the necessary certification that plaintiff has conferred in good faith with defendants in an effort to obtain the requested discovery without court action. Fed. R. Civ. P. 37(a)(1) requires that a motion to compel discovery “include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action.” Fed. R. Civ. P. 37(a)(1). Local Rule 37-1(a) provides that the Court will not entertain a request or a motion to resolve a discovery dispute unless, pursuant to Fed. R. Civ. P. 37, counsel have previously conferred for the purpose of attempting to resolve all disputed issues. N.D. Cal. L. R. 37-1(a). Plaintiff’s motion to compel is therefore DENIED without prejudice to re-filing after he complies with the meet-and-confer requirement set forth in Fed. R. Civ. P. 37 and N.D. Cal. L. R. 37-1(a).

CONCLUSION

For the reasons set forth above, the Court DENIES the motion to designate and define the record without prejudice to filing a renewed motion that clearly specifies the court relief being sought (Dkt. No. 16), and DENIES the motion to compel without prejudice to re-filing after plaintiff complies with the meet-and-confer requirement set forth in Fed. R. Civ. P. 37 and N.D. Cal. L. R. 37-1(a).

This order terminates Dkt. Nos. 16 and 17.

IT IS SO ORDERED.

Dated: 7/6/2020

Haywood S. Gilliam, Jr.
HAYWOOD S. GILLIAM, JR.
United States District Judge

United States District Court
Northern District of California